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U.S. DISTRICT COURT  
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CONSUMER LAW CENTER, INC.  
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Attorney for Plaintiff  
MESAFNT WORKU MEKONNEN

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MESAFNT WORKU MEKONNEN,

Plaintiff,

v.

ELTMAN, ELTMAN & COOPER, P.C., a  
New York corporation,

Defendant.

Case No. 07-05162 PVT**COMPLAINT****DEMAND FOR JURY TRIAL**

15 Unites States Code § 1692 *et seq.*  
California Civil Code § 1788 *et seq.*

Plaintiff, MESAFNT WORKU MEKONNEN, based on information and belief and investigation of counsel, except for those allegations which pertain to the named Plaintiff or his attorneys (which are alleged on personal knowledge), hereby makes the following allegations:

**I. INTRODUCTION**

1. This is an action for statutory damages, attorney fees and costs brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.* (hereinafter "RFDCPA") which prohibit debt collectors from engaging in abusive, deceptive and unfair practices.

**II. JURISDICTION**

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

1           3.       This action arises out of Defendant's violations of the Fair Debt Collection  
2 Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

3                               **III. VENUE**

4           4.       Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), in  
5 that a substantial part of the events or omissions giving rise to the claim occurred in this judicial  
6 district. Venue is also proper in this judicial district pursuant to 15 U.S.C. § 1692k(d), in that the  
7 Defendant transacts business in this judicial district and the violations of the FDCPA complained  
8 of occurred in this judicial district.

9                               **IV. INTRADISTRICT ASSIGNMENT**

10           5.       This lawsuit should be assigned to the San Jose Division of this Court because  
11 a substantial part of the events or omissions which gave rise to this lawsuit occurred in Santa Clara  
12 County.

13                               **V. PARTIES**

14           6.       Plaintiff, MESAFNT WORKU MEKONNEN (hereinafter "Plaintiff"), is a  
15 natural person residing in Santa Clara County, California. Plaintiff is a "consumer" within the  
16 meaning of 15 U.S.C. § 1692a(3) and a "debtor" within the meaning of Cal. Civil Code § 1788.2(h).

17           7.       Defendant, ELTMAN, ELTMAN & COOPER, P.C. (hereinafter "EEC"), is  
18 a New York corporation engaged in the business of collecting debts in this state with its principal  
19 place of business located at: 140 Broadway, 26<sup>th</sup> Floor, New York, New York 10005-1108. EEC  
20 may be served as follows: Eltman, Eltman & Cooper, P.C., c/o Donald B. Serafano, Agent for  
21 Service of Process, 4310 E. Donald Douglas Drive, Suite 201, Long Beach, California 90808-1762.  
22 The principal business of EEC is the collection of debts using the mails and telephone, and EEC  
23 regularly attempts to collect debts alleged to be due another. EEC is a "debt collector" within the  
24 meaning of 15 U.S.C. § 1692a(6) and Cal. Civil Code § 1788.2(c).

25                               **VI. FACTUAL ALLEGATIONS**

26           8.       On a date or dates unknown to the Plaintiff, Plaintiff is alleged to have  
27 incurred a financial obligation that was primarily for personal, family or household purposes, namely  
28 a consumer credit card issued by Metris Companies and bearing the account number XXXX-XXXX-

1 XXXX-2567 (hereinafter "the alleged debt"). The financial obligation alleged to be owed to Metris  
2 Companies by Plaintiff is a "debt" as that term is defined by 15 U.S.C. § 1692a(5) and a "consumer  
3 debt" as that term is defined by Cal. Civil Code § 1788.2(f).

4 9. Plaintiff is informed and believes, and thereon alleges that sometime  
5 thereafter on a date unknown to Plaintiff, the alleged debt was sold, assigned or otherwise  
6 transferred to Erin Capital Management, LLC.

7 10. Sometime thereafter, on a date unknown to Plaintiff, the alleged debt was  
8 consigned, placed or otherwise transferred to Defendant for collection from Plaintiff.

9 11. Thereafter, Defendant sent a collection letter (Exhibit "1") to Plaintiff which  
10 is a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

11 12. A true and accurate copy of the collection letter from Defendant to Plaintiff  
12 is attached hereto, marked Exhibit "1," and by this reference is incorporated herein.

13 13. The collection letter (Exhibit "1") is dated February 23, 2007.

14 14. The collection letter (Exhibit "1") was the Defendant's first written notice  
15 addressed to Plaintiff in connection with collecting the debt allegedly originally owed to Metris  
16 Companies.

17 15. On or about March 27, 2007, Plaintiff mailed a letter to Defendant which  
18 stated: "Please be advised that I dispute this debt and refuse to pay."

19 16. A true and accurate copy of the Plaintiff's letter disputing the debt and  
20 refusing to pay the debt is attached hereto, marked Exhibit "2," and by this reference is incorporated  
21 herein.

22 17. Defendant received Plaintiff's letter disputing the debt and refusing to pay  
23 the debt (Exhibit "2") on or about April 2, 2007.

24 18. A true and accurate copy of the USPS Tracking Report and Certified Mail  
25 Return Receipt of Plaintiff's letter disputing the debt and refusing to pay the debt (Exhibit "2") is  
26 attached hereto, marked Exhibit "3," and by this reference is incorporated herein.

27 19. After receiving Plaintiff's letter notifying Defendant of his refusal to pay the  
28 debt (Exhibit "2"), Defendant continued to communicate with Plaintiff in an attempt to collect the

1 debt allegedly owed to the Metris Companies.

2           20. After receiving Plaintiff's letter disputing the alleged debt (Exhibit "2"),  
3 Defendant continued its collection efforts without first obtaining and mailing Plaintiff a validation  
4 of the debt being collected.

5           21. Thereafter, Defendant sent a second collection letter (Exhibit "4") to Plaintiff  
6 which is a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. §  
7 1692a(2).

8           22. A true and accurate copy of the second collection letter from Defendant to  
9 Plaintiff is attached hereto, marked Exhibit "4," and by this reference is incorporated herein.

10           23. The second collection letter (Exhibit "4") is dated May 17, 2007.

11           24. Thereafter, Defendant sent a third collection letter (Exhibit "5") to Plaintiff  
12 which is a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. §  
13 1692a(2).

14           25. A true and accurate copy of the third collection letter from Defendant to  
15 Plaintiff is attached hereto, marked Exhibit "5," and by this reference is incorporated herein.

16           26. The third collection letter (Exhibit "5") is dated July 25, 2007.

## 17                           **VII. CLAIMS**

### 18                           **FAIR DEBT COLLECTION PRACTICES ACT**

19           27. Plaintiff brings the first claim for relief against Defendant under the Federal  
20 Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692.

21           28. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through  
22 26 above.

23           29. Plaintiff is a "consumer" as that term is defined by the FDCPA, 15 U.S.C. §  
24 1692a(3).

25           30. Defendant, EEC, is a "debt collector" as that term is defined by the FDCPA,  
26 15 U.S.C. § 1692a(6).

27           31. The financial obligation allegedly originally owed to Metris Companies by  
28 Plaintiff is a "debt" as that term is defined by the FDCPA, 15 U.S.C. § 1692a(5).

1           32. Defendant has violated the FDCPA. The violations include, but are not  
2 limited to, the following:

3           a. Defendant continued to communicate with Plaintiff in an attempt to  
4 collect the alleged debt after receiving a written notification that  
5 Plaintiff refused to pay the debt being collected, in violation of 15  
6 U.S.C. § 1692c(c); and

7           b. Defendant continued its collection efforts against Plaintiff after  
8 receiving a written notification within the thirty-day validation period  
9 from Plaintiff disputing the debt being collected in its entirety  
10 without first obtaining a verification of the debt and mailing a copy  
11 of such verification to Plaintiff, in violation of 15 U.S.C. § 1692g(b).

12           33. Defendant's acts as described above were done intentionally with the purpose  
13 of coercing Plaintiff to pay the alleged debt.

14           34. As a result of Defendant's violations of the FDCPA, Plaintiff is entitled to an  
15 award of statutory damages, costs and reasonable attorneys fees, pursuant to 15 U.S.C. § 1692k.

16           **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

17           35. Plaintiff brings the second claim for relief against Defendant under the  
18 Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), California Civil Code §§ 1788-1788.33.

19           36. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through  
20 34 above.

21           37. Plaintiff is a "debtor" as that term is defined by the RFDCPA, Cal. Civil Code  
22 § 1788.2(h).

23           38. Defendant, EEC, is a "debt collector" as that term is defined by the RFDCPA,  
24 Cal. Civil Code § 1788.2(c).

25           39. The financial obligation allegedly originally owed to Metris Companies by  
26 Plaintiff is a "consumer debt" as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(f).

27           40. Defendant has violated the RFDCPA. The violations include, but are not  
28 limited to, the following:



- 1 a. Defendant continued to communicate with Plaintiff in an attempt to  
2 collect the alleged debt after receiving a written notification that  
3 Plaintiff refused to pay the debt being collected, in violation of 15  
4 U.S.C. § 1692c(c), as incorporated by Cal. Civil Code § 1788.17; and  
5 b. Defendant continued its collection efforts against Plaintiff after  
6 receiving a written notification within the thirty-day validation period  
7 from Plaintiff disputing the debt being collected in its entirety  
8 without first obtaining a verification of the debt and mailing a copy  
9 of such verification to Plaintiff, in violation of 15 U.S.C. § 1692g(b),  
10 as incorporated by Cal. Civil Code § 1788.17.

11 41. Defendant's acts as described above were done willfully and knowingly with  
12 the purpose of coercing Plaintiff to pay the alleged debt, within the meaning of Cal. Civil Code §  
13 1788.30(b).

14 42. As a result of Defendant's willful and knowing violations of the RFDCPA,  
15 Plaintiff is entitled to an award of a statutory penalty in an amount not less than one hundred dollars  
16 (\$100) nor greater than one thousand dollars (\$1,000), pursuant to Cal. Civil Code § 1788.30(b).

17 43. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to  
18 an award of statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil  
19 Code § 1788.17.

20 44. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to  
21 an award of his reasonable attorney's fees and costs pursuant to Cal. Civil Code § 1788.30(c) and  
22 15 U.S.C. § 1692k(a)(3), as incorporated by Cal. Civil Code § 1788.17.

23 45. Pursuant to Cal. Civil Code § 1788.32, the remedies provided under the  
24 RFDCPA are intended to be cumulative and in addition to any other procedures, rights or remedies  
25 that the Plaintiff may have under any other provision of law.

26 **VIII. REQUEST FOR RELIEF**

27 Plaintiff requests that this Court:

- 28 a. Assume jurisdiction in this proceeding;

- 1 b. Declare that Defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. §§
- 2 1692c(c) and 1692g(b);
- 3 c. Declare that Defendant violated the Rosenthal Fair Debt Collection Practices Act,
- 4 Cal. Civil Code § 1788.17;
- 5 d. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to
- 6 15 U.S.C. § 1692k(a)(2)(A);
- 7 e. Award Plaintiff a statutory penalty in an amount not less than \$100 nor greater than
- 8 \$1,000 pursuant to Cal. Civil Code § 1788.30(b);
- 9 f. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to
- 10 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil Code § 1788.17;
- 11 g. Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15
- 12 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.17 and 1788.30(c); and
- 13 h. Award Plaintiff such other and further relief as may be just and proper.
- 14

15 CONSUMER LAW CENTER, INC.

16 By: /s/ Fred W. Schwinn  
17 Fred W. Schwinn, Esq.  
18 Attorney for Plaintiff  
19 MESAFNT WORKU MEKONNEN  
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**CERTIFICATION PURSUANT TO CIVIL L.R. 3-16**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

/s/ Fred W. Schwinn  
Fred W. Schwinn, Esq.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, MESAFNT WORKU MEKONNEN, hereby demands a trial by jury of all triable issues of fact in the above-captioned case.

/s/ Fred W. Schwinn  
Fred W. Schwinn, Esq.



**The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or [www.ftc.gov](http://www.ftc.gov).**

**REFUSE TO PAY LETTER**

Elitman Elitman & Cooper P.C. attorneys at law  
Collection Agency's Name

140 Broadway, 26th Floor New York, NY 10005  
Collection Agency's Address

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

3-27-07  
Today's Date

7005 3110 0000 4788 1953  
Tracking Number

Re: Account No. 5458004608052567

Dear Sir or Madam:

I have enclosed a copy of the last collection letter that you sent to me.

In this regard, please be advised that I dispute this debt and refuse to pay.

PLEASE MARK YOUR FILES ACCORDINGLY.

Trusting in your good offices, I remain ...

Very Truly Yours,

Mesafent Mekonnen  
Sign your name here

MESAFENT MEKONNEN  
Print your name here

55 GLEN EYRIE AVE #29  
Print your address here

SAN JOSE, CA 95125

U.S. Postal Service <sup>TM</sup>	
<b>CERTIFIED MAIL<sup>TM</sup> RECEIPT</b>	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ 0.00
Certified Fee	\$ 3.00
Return Receipt Fee (Endorsement Required)	\$ 0.00
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 3.00
Sent To	
Street, Apt. No., or PO Box No. <u>ELITMAN ELITMAN &amp; COOPER PC</u>	
City, State, ZIP+4 <u>140 BROADWAY, 26TH FLOOR</u>	
<u>NEW YORK, NY 10005</u>	
PS Form 3800, June 2002 See Reverse for Instructions	

EXHIBIT

2

**The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or [www.ftc.gov](http://www.ftc.gov).**

USPS - Track &amp; Confirm

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## Track & Confirm

### Search Results

Label/Receipt Number: 7005 3110 0000 4788 1953

Detailed Results:

- Delivered, April 02, 2007, 1:19 pm, NEW YORK, NY 10005
- Arrival at Unit, April 02, 2007, 7:16 am, NEW YORK, NY 10005
- Acceptance, March 28, 2007, 12:51 pm, SAN JOSE, CA 95113

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#### SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ELTMAN ELTMAN & COOPER PC.  
140 BROADWAY, 26TH FLOOR  
NEW YORK, NY 10005

#### COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7005 3110 0000 4788 1953

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

EXHIBIT

3

***Eltman, Eltman & Cooper P.C.***  
***Attorneys at Law***

**140 Broadway, 26<sup>th</sup> Floor New York, NY 10005**  
**(212) 660-3100 Toll Free (866) 266-9498**

**Mesafnt Mekonnen** 1242  
**55 Glen Eyrie Ave Apt 29**  
**San Jose, CA 95125-3125**

**Creditor:** Erin Capital Management  
LLC.

**Account:** 5458004608052567

**EEC File:** NAT204896

**Balance:** \$6,535.02

**Date:** 05/17/2007

**Dear Mr./Mrs. Mekonnen:**

**We have not received a response to our prior correspondence, and therefore, we are assuming that this is a valid debt and that you have an obligation to pay. However, it is not too late to resolve this financial obligation. Please call even if you think you cannot afford to pay.**

**As of yet, no attorney with the firm has personally reviewed the particular circumstances of your account, and this letter should not be taken as a representation of any such review nor as a threat of suit. However, if you fail to contact this office our client may consider the availability of additional remedies to recover the balance due.**

**This firm is a debt collector. We are attempting to collect a debt. Any information obtained will be used for that purpose.**

**Very Truly Yours**

**Eltman, Eltman & Cooper P.C.**



**The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or [www.ftc.gov](http://www.ftc.gov).**

***Eltman, Eltman & Cooper P.C.***  
***Attorneys at Law***

140 Broadway, 26<sup>th</sup> Floor New York, NY 10005  
(212) 660-3100 Toll Free (866) 266-9498

Mesafnt Mekonnen 3519  
55 Glen Eyrie Ave Apt 29  
San Jose, CA 95125-3125  
|||||

Creditor:  
Account: 545800460805256  
Original  
Creditor: Metris Companies  
EEC File: NAT204896  
Balance: \$6,535.02  
Date: 07/25/2007

Dear Mr./Mrs. Mekonnen:

As you know from our previous correspondence, our client, has purchased your debt to Metris Companies. In order to help you clear this debt our client has authorized us to accept a lump sum settlement of 50% of the current outstanding balance.

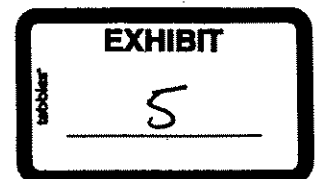
Current Balance: \$6,535.02  
Settlement Amount: \$3,267.51

In order for us to accept the settlement amount stated above payment must be received by 08/22/2007. After that we reserve the right to seek the full amount.

Even if you are unable to accept this offer our client also offers affordable payment plans but need to call us if you want to set up such a plan. We look forward to resolving this matter with you.

Cordially yours,

ELTMAN, ELTMAN & COOPER, P.C.



THIS FIRM IS A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or [www.ftc.gov](http://www.ftc.gov).